

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1368 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BK LIMBACHIA

Versus

STATE OF GUJARAT

Appearance:

Mr.N.S. Desai, with MR YN OZA for Petitioner
Mr.Joshi, Assistant GOVERNMENT PLEADER,
for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/06/2001

ORAL JUDGEMENT

1. By way of the present petition, the petitioner
has prayed that his suspension period between 18.4.1984
and 6.2.1986 be treated as on duty and pay the petitioner

the difference of salary as if he was on duty during the aforesaid suspension period. The petitioner was placed under suspension pending departmental enquiry on 18.4.1984. On conclusion of the enquiry, the petitioner was subjected to penalty of withholding of one annual increment for a period of two years without future effect. Subsequently, the petitioner was issued show cause notice on 12th March, 1990, which is at page 25 of the petition, wherein the petitioner was asked to show cause as to why the period during which he was under suspension till he was reinstated in service should not be treated as a period under suspension. The petitioner gave reply on 20th March, 1990 and pointed out that he is already subjected to the penalty of withholding of one yearly increment without future effect for two years. He pointed out that only one charge was partly proved against him. He requested that in the facts and circumstances of the case, the suspension period may be treated as on duty. Subsequently, by an order dated 10th May, 1990, the aforesaid intervening period was treated as leave without pay. The petitioner has challenged the said action by filing this petition.

2. It is required to be noted that the petitioner has been awarded penalty of withholding of one yearly increment for two years without future effect. The suspension period is treated as a period spent on available leave. Considering the penalty imposed on the petitioner and looking to the facts and circumstances of the case, in my view, it is not a case in which the aforesaid period should have been treated as a period spent on leave which is admissible to him. The departmental enquiry continued for a long time. As per the averments in the petition, in paragraph 10, even many juniors of the petitioner have been promoted to higher post during the intervening period.

3. The Department has not filed any affidavit-in-reply. No satisfactory explanation is given in the said order as to why the said period is treated as a leave period. In the facts and circumstances of the case, it is directed that the aforesaid period during which the petitioner was placed under suspension may be treated as if he continued in the actual service and, thereafter, benefits which are required to be given to the petitioner, i.e. increments and notional benefits, should be made available to him. However, during the intervening period, i.e. the period during which he was placed under suspension, no further amount of salary may be paid to the petitioner and whatever subsistence allowance which was paid to the petitioner may take care

so far as salary part is concerned. However, in order to see that the petitioner may not have to suffer for want of available leave during the suspension period, the said period is ordered to be regularised as if the petitioner has continued in service during the intervening period and whatever other benefits on the basis of continuity of service in the matter of increments, etc., should be paid to the petitioner except that for the intervening period, no back wages may be given to the petitioner and over and above whatever subsistence allowance which the petitioner received during the intervening period, no further salary should be paid to the petitioner. However, the said period should be treated as if the petitioner was on duty for other benefits as mentioned above. The respondents are, therefore, accordingly directed to regularise the suspension period of the petitioner as per the observations made hereinabove.

4. The petition is partly allowed. Rule is made absolute to the aforesaid extent. No costs.

26th June, 2001 (P.B. Majmudar, J.)

(apj)